petitioner, to be operative at once, but to take effect in enjoyment only on October 25. See *Ex parte Reno*, 66 Mo. 266. Or there may have been a present delivery in escrow to the warden. In either situation, the pardon, having once been delivered, would be irrevocable. *Ex parte Powell*, 73 Ala. 517; *Ex parte Reno, supra*. But there is a third possibility, that the pardon was sent to the warden as the governor's agent to hold it and deliver it on October 25. See *Lange* v. *Cullinan*, 205 Ill. 365, 68 N. E. 934. This is a possible view of the facts, and supports the court's decision. Assuming a valid delivery, the question remains whether the pardon would be void for mistake. Fraud, even that of a third party, invalidates a pardon. *Commonwealth* v. *Halloway*, 44 Pa. St. 210; *State* v. *Leak*, 5 Ind. 359; *contra*, *Knapp* v. *Thomas*, 39 Ohio St. 377. See 1 BISHOP, CRIMINAL LAW, 8 ed., §§ 905, 906. An English statute seems also to make pardons issued because of honest misrepresentation and mistake void. See 27 EDW. 3, st. 1, c. 2. See 4 BLACKSTONE, COMMENTARIES, 400. Whether that statute is part of the common law in this country is doubtful. See *Commonwealth* v. *Halloway, supra*, 219; *Knapp* v. *Thomas, supra*, 385. But some American cases show a tendency to treat mistake as vitiating, even in the absence of statute. See *State* v. *McIntire*, 1 Jones (N. C.), 1. But see *Ex parte Rice*, 72 Tex. Cr. R. 587, 162 S. W. 891. Undoubtedly fraud may be inferred from the fact of misinformation, if no other facts appear. *Rosson* v. *State*, 23 Tex. App. 287, 4 S. W. 897. However, it seems unlikely that American courts would go so far as to hold a pardon invalid because of mistake caused by the honest misrepresentation of a person totally unconnected in interest with the prisoner.

PAROL EVIDENCE RULE — CONSTRUCTION OF DOCUMENTS — SUPPLEMENTING THE MINUTES OF A CITY COUNCIL BY PAROL. — Plaintiff sues the defendant city for injuries sustained while attending a horse show on the street. The minutes of the council showed an application for permission to use a street for a horse show, but showed no action by the council. Parol evidence of such action was admitted by the trial court. *Held*, that this was error. *City of Mt. Vernon* v. *Alldridge*, 128 N. E. 934 (Ind.).

In proving the proceedings of public bodies, trustworthiness and certainty are best secured by the exclusion of all parol evidence and reliance solely upon the record. And when a record is required by statute, many courts exclude all parol evidence contradicting or extending it. *Dunn* v. *Cadiz*, 140 Ky. 217, 130 S. W. 1089; *Belleville* v. *Miller*, 257 Ill. 244, 100 N. E. 946. Nor is parol evidence admissible to vary the plain and clear language of the record. *Marshall* v. *Midland Valley R. Co.*, 96 Kan. 470, 152 Pac. 634; *Bailey* v. *Des Moines*, 158 Ia. 747, 138 N. W. 853. But parol evidence is admissible to explain ambiguous language in the record, in the absence of a statute making the record final. *Watts* v. *Levee District*, 164 Mo. App. 263, 145 S. W. 129; *Beatle* v. *Roberts*, 156 Ia. 575, 137 N. W. 1006. And liberal courts admit parol evidence to supplement the minutes of public bodies. *Gilmer* v. *School District*, 41 Okla. 12, 136 Pac. 1086; *Horning* v. *Canby*, 188 Pac. (Ore.) 700. *Contra*, *Kidson* v. *Bangor*, 99 Me. 139, 58 Atl. 900. Since every addition a litigant would urge is substantially a variation, this is going far. Yet when the statute merely directs the keeping of a record, rights of third parties should not be lost through the negligence of a city clerk. *Cf. Chicago R. Co.* v. *Putnam*, 36 Kan. 121, 12 Pac. 593. *Contra*, *Lebanon Water Co.* v. *Lebanon*, 163 Mo. 254, 63 S. W. 811. Where the record is obviously incomplete or ambiguous, justice would seem to require the use of parol evidence to protect the interests of third parties.

PUBLIC OFFICERS — NATURE OF PUBLIC OFFICE — ACTION FOR DISMISSAL WITHOUT CAUSE. — The plaintiff contracted to serve five years as superin-

tendent of industries in Bengal. He was dismissed without cause. By the terms of the contract it was not to be terminated except for misconduct. *Held*, that the plaintiff has no cause of action. *Denning* v. *Secretary of State for India in Council*, 37 T. L. R. 138 (K. B.).

It is settled in England that servants of the Crown can be dismissed at pleasure. *Shenton* v. *Smith*, [1895] A. C. 229; *Dunn* v. *The Queen*, [1896] 1 Q. B. 116. A special contract does not alter this. *Hales* v. *The King*, 34 T. L. R. 589. However, the right can be abrogated by statute. *Gould* v. *Stuart*, [1896] A. C. 575. In the United States a distinction is taken between public officers and public employees. In the absence of special provisions in state constitutions the former can be removed at any time. An office is not property. *Taylor* v. *Beckham*, 178 U. S. 548; *Conner* v. *The Mayor*, 5 N. Y. 285; *Mial* v. *Ellington*, 134 N. C. 131, 46 S. E. 961, overruling *Hoke* v. *Henderson*, 4 Dev. (N. C.) 1. And designation to office does not create a contract right. *Butler* v. *Pennsylvania*, 10 How. (U. S.) 402; *Jones, Purvis & Co.* v. *Hobbs*, 4 Baxt. (Tenn.) 113; see COOLEY, CONSTITUTIONAL LIMITATIONS, 7 ed., 388. On the other hand, a public employee is protected from arbitrary dismissal by the contract clause. *Hall* v. *Wisconsin*, 103 U. S. 5. There is considerable confusion as to the distinction in any particular case. See *David* v. *Portland Water Committee*, 14 Ore. 98, 117; *cf. In re Corliss*, 11 R. I. 638. All offices must be created either by the constitution or the legislature. *United States* v. *Maurice*, 2 Brock. (U. S.) 96; *Miller* v. *Warner*, 42 App. Div. 208, 59 N. Y. Supp. 956; *State* v. *Spaulding*, 102 Ia. 639, 72 N. W. 288. But the converse is not true; a legislative act may create a mere employment. *Bunn* v. *People*, 45 Ill. 397. The criterion mostly stressed is whether the individual performs some governmental function. See *McArdle* v. *Jersey City*, 66 N. J. L. 590, 598, 49 Atl. 1013, 1016; MECHEM, PUBLIC OFFICERS AND OFFICES, 1 ed., § 4. The scope of such a definition has perhaps not always been realized. See Eugene Wambaugh, "The Present Scope of Government," 20 AMER. BAR ASS. REP. 307, 81 ATLANTIC MONTHLY, 120. At any rate, the plaintiff in the principal case would probably be considered a public officer, so a like result would be reached in this country.

PUBLIC SERVICE COMPANIES — REGULATION OF PUBLIC SERVICE COMPANIES — POWER OF COMMISSION TO FIX RATES WHEN A STATUTORY MAXIMUM RATE HAS BEEN HELD CONFISCATORY. — The New York Public Service Commission "may, by order, fix the maximum price of gas or electricity not exceeding that fixed by statute. . . ." (N. Y. L. 1910, c. 480, § 72.) The courts having declared the statutory maximum confiscatory as to the defendant, the defendant obtained an order from the commission fixing higher rates. The plaintiff, a consumer, claimed that the order was void as beyond the power of the commission and sought to enjoin the defendant from enforcing those rates. *Held*, that an injunction *pendente lite* be granted. *Morrell* v. *Brooklyn Borough Gas Co.*, 113 Misc. 65, 184 N. Y. Supp. 651.

The decisive question in this case is whether the Public Service Commission Law confers on the commission a limited power to fix rates for gas or a general power with a limitation. See N. Y. L. 1910, c. 480, art. 4. The court takes the former interpretation, that the power is only to fix rates less than the statutory maximum. See *Brooklyn Borough Gas Co.* v. *Public Service Commission*, 17 State Dept. Rep. (N. Y.) 81, 116. It follows that when all such rates are invalid, as where the statutory maximum has been found confiscatory, the commission has no power to fix rates at all. This leaves the anomaly of one company, freed from all expert administrative supervision, fixing its own rates on common-law principles. Higher rates previously fixed by statute or the commission are repealed by a statute fixing a lower maximum. See *Brooklyn Borough Gas Co.* v. *Public Service Commission*, *supra*, 115, 119; *Matter of*